

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROBERT BALES,
1301 North Warehouse Road
Fort Leavenworth, Kansas 66027

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,
2201 C Street N.W.
Washington, D.C. 20522

Defendant.

Serve:

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

U.S. Attorney's Office
District of Columbia
ATTN: Civil Service Processing Clerk
555 4th Street, NW
Washington, DC 20530

U.S. Department of State
The Executive Office
Office of the Legal Adviser
600 19th Street N.W., Suite 5.600
Washington, D.C. 20522

Civil No. 18-2779

COMPLAINT

Plaintiff Robert Bales brings this action against Defendant Department of State to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Robert Bales is an individual residing in Leavenworth, Kansas.

4. Defendant United States Department of State is an agency of the United States Government. Defendant has possession, custody, and control of records Plaintiff seeks. Defendant is headquartered at 12201 C Street N.W., Washington, D.C. 20522.

STATEMENT OF FACTS

5. On September 18, 2018, Plaintiff submitted to Defendant a FOIA request seeking records in connection with seven Afghan men who were called by the United States to testify in the court-martial of *United States v. Robert Bales* in 2013. *See* Exhibit (“Exh.”) 1. In the letter, Plaintiff requested both travel-related documents related to these individuals and biometric data regarding these individuals that likely would be in the Defendant’s possession. *Id.*

6. The request: identified the individuals in a manner that would allow the Defendant to retrieve relevant records; described the Defendant’s role in facilitating the individuals’ travel to the United States; specified the potential locations of responsive documents; and provided a background of biometric enrollment data, and specifically its use by the Defendant in Afghanistan. *Id.*, pp. 2-5.

7. The request also noted that the documents requested were the same documents that had been requested in an October 25, 2017 FOIA request, that had been dismissed and re-

opened. *Id.*, p. 1. In fact, the September 18, 2018 FOIA request narrowed the scope of documents that had been requested in the October 25, 2017 request. *Id.*

8. Upon receiving the September 18, 2018 FOIA request, Defendant was required to, within 20 working days, determine whether to comply with the request and immediately notify Plaintiff of such determination and the reasons therefor. 5 U.S.C. § 552 (a)(6)(A)(1). Defendant was required to, at a minimum: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

9. As of the filing of this complaint, Defendant has failed to perform any of these actions.

10. Plaintiff is being harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be harmed unless Defendant is compelled to comply with FOIA.

COUNT I Violation of FOIA, 5 U.S.C. § 552

11. Plaintiff re-alleges paragraphs 1 through 10 as if fully stated herein.

12. Because Defendant failed to make a determination as to whether to comply with the statute within 20 working days of receiving the request, Plaintiff is deemed to have exhausted all administrative remedies available to him under FOIA, and has therefore satisfied all jurisdictional prerequisites to filing this Complaint. *See* 5 U.S.C. § 552(a)(6)(A)(i)-(ii).

13. Defendant has violated FOIA in that Defendant has failed to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records Defendant intended to produce or withhold and the reasons for any

withholdings; and (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to describe the search conducted, including the search methods used; (2) order Defendant to describe the responsive documents Defendant located in a *Vaughn* index, *see Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973); (3) order Defendant to either produce promptly the responsive documents, or describe with particularity and support with substantial evidence the reasons for withholding each document; (4) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (5) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (6) grant Plaintiff such other relief as the Court deems just and proper.

Dated: ___11/28/2018___

Respectfully submitted,

_____/John N. Maher/_____
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